

Forest Service, USDA

§ 218.14

aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented and a copy placed in the objection record.

§ 218.11 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face office meeting, project site visit, teleconference, video conference, etc. The responsible official should be a participant along with the reviewing officer in any objection resolution meeting. Meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate.

(b) *Reviewing officer's response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one objection to a proposed project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the reviewing officer's written response to an objection is available.

§ 218.12 Timing of project decision.

(a) The responsible official may not sign a ROD or DN subject to the provisions of this part until the reviewing officer has responded in writing to all pending objections (see § 218.11(b)(1)).

(b) The responsible official may not sign a ROD or DN subject to the provisions of this part until all concerns and instructions identified by the reviewing officer in the objection response have been addressed.

(c) When no objection is filed within the objection filing period (see §§ 218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection filing period.

(d) When a proposed project or activity is not subject to objection because no timely, specific written comments regarding the proposal were received during a designated opportunity for public comment (see § 218.4), the approval of a proposed project or activity documented in a ROD must be in accordance with 40 CFR 1506.10 and 36 CFR 220.5(g), and the approval of a proposed project or activity documented in a DN must be made in accordance with 36 CFR 220.7(c) and (d).

§ 218.13 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

§ 218.14 Judicial proceedings.

(a) The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions.

(b) Any filing for Federal judicial review of a decisions covered by this subpart is premature and inappropriate

§218.15

unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

§218.15 Information collection requirements.

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see §218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596-0172.

§218.16 Effective dates.

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in effect as of March 27, 2013 for projects where scoping begins on or after this date.

(2) Hazardous fuel reduction project proposals under the HFRA for which public scoping began prior to March 27, 2013 may use the predecisional objection procedures posted at <http://www.fs.fed.us/objections>.

(3) Hazardous fuel reduction project proposals that are re-scoped with the public or re-issued for notice and comment after March 27, 2013 are subject to this part.

(b) *Effective dates for non-HFRA-authorized projects.* (1) Project proposals with public scoping completed, but that have not had legal notice published. The applicable provisions of this part are in effect as of March 27, 2013 where public scoping was previously initiated for project proposals, but legal notice of the opportunity to comment has not yet been published; unless scoping or other public notification of the project (e.g. Schedule of Proposed Actions) has clearly indicated the project to be under the former 36 CFR part 215 appeal process.

(2) Project proposals which have legal notice published, but a Decision Notice or Record of Decision has not been signed. If a Decision Notice or Record of Decision is signed within 6 months of March 27, 2013, it will be subject to the 36 CFR part 215 appeal process. If the Decision Notice or Record of Decision is to be signed more than 6 months

36 CFR Ch. II (7-1-16 Edition)

beyond March 27, 2013, the project proposal will be subject to the requirements of this part. In this case, the responsible official will notify all interested and affected parties who participated during scoping or provided specific written comment regarding the proposed project or activity during the comment period initiated with a legal notice that the project proposal will be subject to the predecisional objection regulations at 36 CFR part 218. All interested and affected parties who provided written comment as defined in §218.2 during scoping or the comment period will be eligible to participate in the objection process.

(3) Project proposals are subject to the requirements of this part when initial public scoping, re-scoping with the public, or re-issuance of notice and comment begins on or after March 27, 2013.

Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under Healthy Forests Restoration Act

§218.20 Applicability and scope.

This subpart includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§218.21 Emergency situations.

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation exists as defined in this section.

(b) *Emergency situation definition.* A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary